

Department of Finance

AB x1 26—Expectations and understandings regarding bond payments

Various interested parties have raised questions about how AB x1 26 may affect various types of debt instruments that have been issued by redevelopment agencies. The Department of Finance will endeavor to administer its responsibilities under the act and provide guidance as questions arise so as to achieve the intent of the law that bond holders and other obligors be protected. The Department of Finance believes that while AB x1 26 does not specifically recite every possible requirement, it does place affirmative duty to perform obligations required pursuant to bond covenants and agreements. It is the Department's expectation that redevelopment agencies, successor agencies, oversight boards, and county auditors will take appropriate actions to comply with obligations as they have in the past.

Q. What Should Happen to Bond Payments due on February 1, 2012?

ABx1 26 requires compliance with all obligations contained in enforceable obligations. Bond payments due on February 1, 2012, should be paid in accordance with the bond covenants, which likely require payments be made to a trustee prior to the February 1st due date. In general, bond documents require the payment of funds a couple of days prior to the due date so that the trustee can make the debt service payment on time. Further, even if the early payment to the trustee is not required by the bond documents, nothing in ABx1 26 prevents a redevelopment agency from making the payment to the trustee early.

Additionally, the redevelopment agency and future successor can work with the county auditor to determine how best to get the payments and make certain that the bond payments will be seamless. ABx1 26 provides tools to help this occur. For example, ABx1 26 requires that redevelopment agencies provide documents and information to the future successor (§34169, subd. (e)) and requires that redevelopment agencies have set aside and maintained reserves required by section §34169, subd. (c). Finally, ABx1 26 explicitly requires that the successor to make bond payments. The Department of Finance has no reason to believe that any successor will fail in this task.

The Department of Finance believes that ABx1 26 requires successor agencies to perform all obligations with respect to debt including any special accounting, reserving, or payment priorities. The Department of Finance believes that AB x1 26 does not prevent compliance and it is the Department's expectation that successor agencies, oversight boards, and county auditors will take appropriate actions to comply with obligations as they have in the past.

Q. What about bonds with uneven payment schedules where one semi-annual payment is much larger than the other?

ABx1 26 requires successor agencies to perform all obligations with respect to enforceable debt obligations. The Department of Finance believes this includes requirements for any special accounting, reserving, or annual set-aside payment priorities. With respect to uneven payment schedules, ABx1 26 clearly allows successor agencies to create reserves for future bond payments that may be needed, and so that bond covenants can be met as required by ABx1 26. Further, many bond indentures

require set-asides at the beginning of a fiscal year an amount to cover payments for the entire year, if not more. In order to comply with the bond covenants, this type of annual set-aside should be included on the Recognized Obligation Payment Schedule, thereby ensuring that enough revenues will be available when each semi-annual payment comes due. It is the Department's expectation that any needed reserves or required annual set-asides will be included in Recognized Obligation Payment Schedules.

Q. Does ABx1 26 require bond funds to be comingled or pooled?

No.

The Department of Finance believes that ABx1 26 requires successor agencies to perform all obligations with respect to debt including any special accounting, reserving, or payment priorities. The Department believes that AB x1 26 places an affirmative duty to perform obligations required pursuant to bond covenants and agreements. Additionally, county auditor-controllers also have an affirmative duty to administer the Trust Fund for the benefit of RDA bond holders. Thus, it is the Department's expectation that successor agencies, oversight boards, and county auditors will take appropriate actions to comply with obligations as they have in the past.

Q. Does ABx1 26 eliminate revenue pledges?

No.

ABx1 26 specifically states that revenue pledges are to be honored. In order to maintain the pledges, it may be necessary to continue to segregate the revenues received attributable to each project area as has been done in the past. It is recommended that the county auditor-controller and the successor agency coordinate efforts to create subaccounts in order to comply with bond covenants applicable to each project area.

Maintaining subaccounts (in the similar fashion as done under the prior law) will facilitate a successor agency's ability to set aside the required specific revenues for each bond and make payments from those specific revenues first, if and as required by the bond obligations.

It is further the Department's expectation that certain credits may be strengthened in comparison to what they would be under prior law in that they will have access to more of the tax increment for servicing of debt. Specifically, the 20-percent housing set-aside is no longer made and only those funds necessary to service housing bond debt and other enforceable housing obligations will be designated for housing purposes. The remainder will be available for debt service on other bonds.

Q. Does ABx1 26 eliminate the ability of counties to do cash-flow loans if needed?

No. Department of Finance believes county treasurers have authority under both existing law and ABx1 26 to make cash flow loans to successor agencies. If there is insufficient cash to make payments, we urge county treasurers to make such loans from the funds held for each successor agency. These loans could be recovered by future distributions, if necessary.

We call attention to the following specific provisions in ABx1 26 (Health and Safety Code Sections):

Sec. 34169 Until successor agencies are authorized...redevelopment agencies shall do all of the following:

. . .

(c). Set aside or maintain reserves in the amount required by indentures, trust indentures, or similar documents governing the issuance of outstanding redevelopment agency bonds.

(e) Cooperate with successors agencies, and provide all documents necessary or desirable for ... making of payments required by enforceable obligations, and performance of enforceable obligations by successor agencies.

(f) Take all reasonable measures to avoid triggering an event of default under any enforceable obligations as defined in subdivision (d) of Section 34167.

Sec. 34171 (d) (1) "Enforceable obligation" means any of the following: (A) Bonds, as defined by Section 33602 and bonds issued pursuant to Section 58383 of the Government Code, including the required debt service, reserve set-asides, and any other payments required under the indenture or similar documents governing the issuance of the outstanding bonds of the former redevelopment agency.

35167 (h) After the enforceable obligation payment schedule is adopted pursuant to Section 34169, or after 60 days from the effective date of this part, whichever is sooner, the [redevelopment] agency shall not make a payment unless it is listed in an adopted enforceable obligation payment schedule, **other than payments required to meet obligations with respect to bonded indebtedness.**

34177. Successor agencies are required to do all of the following: (a) Continue to make payments due for enforceable obligations. (1) On and after October 1, 2011, and until a Recognized Obligation Payment Schedule becomes operative, only payments required pursuant to an enforceable obligations payment schedule shall be made.

Under the Court's order, while the due date for adopting a Recognized Obligation Payment Schedule is extended to May 1, 2012, the successor agency can adopt and have an operational Schedule by February 4, if the Oversight Board is appointed and adopts a Schedule on February 1, and if Finance does not object. This would require notice of the meeting to occur in January. We recognize this is very difficult timing but some agencies have already adopted draft Recognized Obligation Payment Schedules and this may be possible for many agencies.

34173. (a) Successor agencies, as defined in this part, are hereby designated as successor entities to the former redevelopment agencies. (b) Except for those provisions of the Community Redevelopment Law that are repealed, restricted, or revised pursuant to the act adding this part, all authority, rights, powers, duties, and obligations previously vested with the former redevelopment agencies, under the Community Redevelopment Law, are hereby vested in the successor agencies.

34174(a) nothing herein is intended to absolve the successor agency of payment or other obligations due or imposed pursuant to the enforceable obligations; and provided further, that nothing in the act adding this part is intended to be construed as an action or circumstance that may give rise to an event of default under any of the documents governing enforceable obligations.

34175. (a) It is the intent of this part that pledges of revenues associated with enforceable obligations of the former redevelopment agencies are to be honored. It is intended that the cessation of any redevelopment agency shall not affect either the pledge, the legal existence of that pledge, or the stream of revenues available to meet the requirements of the pledge.

34177. Successor agencies are required to do all of the following: (b) Maintain reserves in the amount required by indentures, trust indentures, or similar documents governing the issuance of outstanding redevelopment agency bonds. (c) Perform obligations required pursuant to any enforceable obligation.

The Department views this language and 34173 (a) and 34175 (a) above as including any responsibilities with respect to bond obligations, including segregation of funds or separate priority of payments. This also would include requirements with respect to tax exempt status or other federal bond laws.

Section 34183 (c) The county treasurer may loan any funds from the county treasury that are necessary to ensure prompt payments of redevelopment agency debts.